

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(s): Makela, J.

SERIAL NO.: 09/827,489 ART UNIT: 2645

FILING DATE: 04/06/2001 EXAMINER: Hoosain, A.

TITLE: ACTIVATION OF TELEPHONE'S OWN CALL ANSWERING EQUIPMENT ACCORDING TO THE NUMBER OF THE CALLING PARTY

ATTORNEY

DOCKET NO.: 297-006914-US (C01)

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESUBMISSION OF APPEAL BRIEF FILED ON JULY 13, 2004

This is in response to the telephone interview with the Examiner on January 13, 2005. The Examiner states that he has not received the Appeal Brief filed by Applicant on July 13, 2004, and has requested that the Applicant resubmit the Appeal Brief.

Accordingly, attached hereto is a second copy of the Appeal Brief timely filed on July 13, 2004.

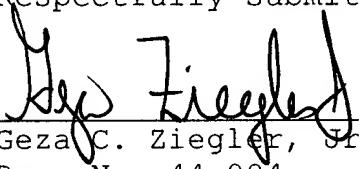
Also attached is the Certificate of Mailing as proof that the correspondence was filed on July 13, 2004.

Furthermore, a copy of the return postcard is also attached. The postcard reflects that the Appeal Brief and fee of \$330.00 were

received in the USPTO (Board of Patent Appeals and Interferences) on July 19, 2004.

Therefore, the Appeal Brief was duly and timely filed on July 13, 2004, and no further fees are due with respect to this transmission.

Respectfully submitted,



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CERTIFICATE OF MAILING

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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ATTENTION: BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANTS' BRIEF
(37 C.F.R. §1.192)

This is an appeal from the final rejection of the claims in the above-identified application. A Notice of Appeal was mailed on May 13, 2004. The fees required under 37 C.F.R. §1.17 are being submitted herewith. This brief is being submitted in triplicate. The appendix of claims is attached hereto.

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is: NOKIA MOBILE PHONES LTD. of Salo, Finland.

II. RELATED APPEALS AND INTERFERENCES

There are no directly related appeals or interferences regarding this application.

III. STATUS OF CLAIMS

Claims 1-40 pending in the application.

Claims 1-9, 12-17, 20, 23-26, 28-30, 32-34, 36-38 and 40 have been finally rejected.

The claims on appeal are 1-9, 12-17, 20, 23-26, 28-30, 32-34, 36-38 and 40.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the Final Rejection.

V. SUMMARY OF INVENTION

The invention relates to a method and to an apparatus by which a portable terminal replies to an incoming call (Specification, page 4, line 19) wherein, in response to the incoming call, the portable terminal (Specification page 6 at line 31 through page 7 at line 6, Fig. 1), by action of the portable terminal, identifies the caller (Specification page 4 at line 22) on the basis of identification information (Specification page 6 at line 38 through page 7 at line 1) and also, by action of the portable terminal, sends a reply (specification page 7 at lines

4-5, element 7 in Fig. 1) or directs the incoming call to another answering service (Specification page 7 at lines 8-10, element 8 in Fig. 1). As a feature of the invention, the reply has a form that is selectable from a plurality of forms of communication (specification page 4 at lines 19-27) and, in the step of sending a reply, the portable terminal by action of the portable terminal selects a form of the response. The plurality of forms of communication include a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string. The present invention also provides for a selection of the message to be transmitted in a reply to the caller (Specification page 7 at lines 19-27).

VI. ISSUES

The following issues are treated in this appeal.

1. Whether Claims 1, 4-9, 12-13, 15-17, 20, 23-26, 28-30, 32-34, 36-38 and 40 should be rejected under 35 U.S.C. 102 as being anticipated by Mizikovsky (US 5,559,860) (Incorrect patent number appears in the Office Action). This listing of the claims corresponds to what is believed to be the intended listing of claims by the examiner is Point 3 on Page 2 of the Final Action. There appears to be error in Point 3 of the Final Action because the expression "15-21 and 23-40" includes claims having allowable subject matter, namely, claims 18, 19, 21, 27, 31, 35, and 39 which were said to have allowable subject matter (both in the Final

Rejection of 02/17/2004 and the previous Action of 10/08/2003) and are not being appealed.

2. Whether Claims 2 and 6 should be rejected under 35 U.S.C. 103 as being unpatentable over Mizikovsky in view of Jambhekar (US 5,848,356).
3. Whether Claims 3-5, 28, 32, 36 and 40 should be rejected under 35 U.S.C. 103 as being unpatentable over Mizikovsky in view of Bremer (US 6,018,671).
4. Whether Claim 14 should be rejected under 35 U.S.C. 103 as being unpatentable over Mizikovsky in view of Villa-Real (US 4,481,382).
5. Whether Claims 15-17 should be rejected under 35 U.S.C. 103 as being unpatentable over Mizikovsky in view of Wolff (US 5,327,486).

VII. GROUPING OF CLAIMS

The claims do not stand or fall together.

The claims are grouped as follows:

Group 1 - Claims 1, 4-9, 12-13, 15-17, 20, 23-26, 28-30, 32-34, 36-38 and 40.

Group 2 - Claim 2 and 6.

Group 3 - Claim 3-5, 28, 32, 36 and 40.

Group 4 - Claim 14.

Group 5 - Claims 15-17.

In accordance with 37 C.F.R. §1.192(c)(7), an explanation of why the claims of the groups are believed to be separately patentable is contained in the Argument section below.

VIII. ARGUMENT

In the above-identified five issues to be discussed in this argument, it is noted that the teachings of Mizikovsky appear in all five of these issues. With respect to the first of these issues, namely, the rejections under 35 U.S.C. 102, Mizikovsky is the sole reference employed in rejection of the claims. An important aspect of the present invention is the fact that the portable terminal is able, by itself, to perform the tasks of caller identification, replying to the caller, and selection of the form of communication. In contrast, a reading of Mizikovsky makes it clear that Mizikovsky is teaching a cooperation among a telephone device with numerous external auxiliary devices for implementing the various communication functions which, in the case of the present invention, can be accomplished by the portable terminal itself. As a further contrast between the teachings of Mizikovsky and the principles of the present invention, it is observed that Mizikovsky does not teach a very basic aspect of the resident invention, namely, the replying to the caller with a specific message.

However, in the Office Action of the final rejection, the examiner cites various portions of the Mizikovsky reference to support a viewpoint that is contrary to the Applicant's position.

By way of example, the examiner is of the opinion that the accessories block 50 in Fig. 1 of Mizikovsky is shown to be essentially included in the mobile station, this being in

contrast to the peripherals 52 which the examiner regards as being external to the mobile station.

With respect to block 50, Mizikovsky explains in column 6, beginning at line 56, that the accessories device may include a voice recorder, such as a telephone answering machine, which is activated when an incoming call is received from a calling party to which a voice recorder response category has been assigned. Another example of an accessory device in Mizikovsky is a voice mail device, which is seen to be quite similar to the voice recorder. Yet another accessory device that may be used with the Mizikovsky apparatus is a descrambler for descrambling information received by the mobile station from a base station, thereby descrambling information returned from the mobile station to the calling party.

In order to draw an analogy between Mizikovsky and the present invention, the examiner appears to treat elements of the accessories block 50 as being software routines in spite of the fact that Mizikovsky uses terminology such as answering machine and voice-mail device. With respect to peripherals shown on the right side of Fig. 1, Mizikovsky states (column 7 at lines 6-11) that his mobile station may be used also with other accessory devices that are illustrated in Fig. 1 as peripheral devices. This indicates that Mizikovsky does not draw a strong distinction between accessory devices and peripheral devices. He proceeds then to give examples of the peripheral devices that include a facsimile device, a data processing terminal, a data modem, a data recorder, and a multimedia terminal.

Admittedly, Mizikovsky employs inclined arrows to show a coupling of the peripheral devices to the interface 52, while horizontal and vertical arrows are employed for a coupling of the accessories 50 to other components of the mobile station 10. Whether this matter of presentation is intended to show a different form of relationship between the accessories and the peripherals, relative to the other components of the mobile station 10, is a matter of conjecture. However, the aforementioned passage from column 7, at lines 6-11, clearly suggests that the graphical presentation is intended to facilitate a reading of the reference, and does not suggest any inherent difference between the accessories 50 and the peripherals connected to the interface 52. Also, in column 3 at line 2, it is stated that a peripheral device may be included in or coupled to the mobile station, a matter difficult to picture in a the case of a fax machine which is the peripheral device. The real lesson here is that Mizikovsky is not distinguishing between accessory and peripheral devices in terms of their functional relationships relative to the cellular telephone. Just as a standard fax machine would not be part of a portable terminal because of its large size and weight, so too, it must be concluded that the accessories are not necessarily part of the cellular telephone. Therefore, it appears to be impossible to draw a conclusion that one or more of the accessories 50 may actually be a part of the mobile station of Mizikovsky in contradistinction to the peripherals which are understood to be external elements separate from the mobile station. Furthermore, it is noted that nowhere, in the text of the reference, is there a statement teaching that the items listed in the accessories block are part of the mobile terminal.

With respect to the application of the teachings of Mizikovsky to the present claims, a significant difference is noted in present claim 1, which states specifically that the portable terminal sends a reply. However, nowhere in Mizikovsky does the text disclose the sending of a reply. Even if one were to imagine that an outgoing message of the voice mail constitutes such a reply, it must be argued that this is not a reply, but only serves as a signal to a caller that voice mail is available for use if the caller wants to use the voice mail. It is observed further that nowhere in Mizikovsky is there a suggestion of a choosing of outgoing messages that might be personalized for specific situations encountered by a user of the mobile station.

With respect to the first issue regarding the rejection of Claims 1, 4-9, 12-13, 15-17, 20, 23-26, 28-30, 32-34, 36-38 and 40, the examiner notes at the top of page 3 that Mizikovsky teaches a reply having a form selectable from accessories. This shows that the accessories perform a function in the selection of a reply, rather than having the mobile terminal generate the reply, if a reply were generated. However, as noted above, Mizikovsky does not generate a reply. Mizikovsky is said to provide a selected response to callers through the action of element 50 (which may be a voice mail) or accessory 114, or element 516 that is also an accessory. This contradicts the plain meaning of claim 1 which calls for the sending of a reply by providing a selected response exclusively through the action of the portable terminal.

It is noted that the rejection under 35 U.S.C. 102 is applied to each of the independent claims 1, 20, 23, 24, 25, 29, 33 and 37.

These claims disclose similar subject matter. As described above for claim 1, claim 20 discloses means providing functions comparable to the functions or the method steps of claim 1. Claim 20 sets forth the functions of identification, replying to a caller by way of a response, and selection of a form of communication, the functions being provided by the portable terminal itself. Thus, Claim 20 is distinguishable from Mizikovsky. In Mizikovsky, the response is the way in which his apparatus responds to an incoming call, for example, a distinguishing ring, and a routing of the incoming call to any one of recorder, a voice mail system, a modem, or a facsimile device (column 3 at lines 1-21). In the present invention, the response is a message sent to the calling party.

In a similar fashion, it is noted that independent claim 23 also sets forth the functions of identification, replying to a caller by way of a response, and selection of a form of communication, the functions being provided by the portable terminal itself. Therefore, the argument provided for claim 1, above, applies also to claim 23. While the other independent claims 24, 25, 29, 33 and 37 recite the subject matter in somewhat different ways, the basic concepts, in terms of identification and reply are specifically called, so that the teachings of Mizikovsky are readily distinguished from these claims.

With respect to claim 7, the examiner relies on a chart in Fig. 5 of Mizikovsky, which addresses activation of an accessory. However, the chart does not indicate what task the accessory is performing. As noted above, the accessory is not transmitting a reply to the caller. Similarly, with respect to claim 8, the examiner alleges that a reply is sent to certain identified

parties. However, the blocks appended to elements 508 and 512 discuss matters such as the routing of a signal or whether a call is to be ignored, but do not show what is the content of a message allegedly sent as a reply to the caller. A similar comment applies to claim 9. With respect to the first paragraph on page 4 the Office Action, the examiner comments on claims 26, 30, 34 and 38. In the comment, the examiner makes reference to the Mizikovsky teaching at column 8, lines 51-59. The teaching states that a voice mail response may be selected such that an incoming call activates a voice mail system to record the message. In other words, the Mizikovsky apparatus is activating an accessory device to record the incoming message, but this does not constitute the sending of a reply message to the calling party, as called for by the present claims. In this respect, it is noted that claim 33 from which claim 34 depends, and claim 37 from which claim 38 depends set forth a selected response to the caller, while the depending claims set forth the format for communicating the response. Again, it is difficult to say how Mizikovsky can serve as a basis for rejection of these claims in view of the lack of a specific teaching of sending replies to the calling parties.

With respect to the second issue on whether Claim 2 and 6 should be rejected under 35 U.S.C. 103, the examiner combines the teachings of Mizikovsky with Jambhekar upon whom the examiner relies to teach an e-mail message, a facsimile message, and an SMS message. In the discussion of Fig. 5 in the detailed description, Jambhekar discloses the operation of selecting an entry in the phone book directory. This does not appear to be a teaching relating to the operation of a mobile terminal for automatic selection of a signal format for replying to a calling

party. Accordingly, it does not appear that the teaching of Jambhekar can be combined with, nor is there motivation to combine this teaching with the teaching of Mizikovsky.

With respect to the third issue on whether Claims 3-5, 28, 32, 36 and 40 should be rejected under 35 U.S.C. 103, the examiner combines the teachings of Mizikovsky with Bremer. The examiner relies on Bremer to teach the matter of waiting during a delay, which teaching is absent in Mizikovsky. With respect to claim 3, the examiner notes that Bremer adds to the Mizikovsky apparatus the capacity for providing default messages. This would be useful if Mizikovsky taught the sending of a reply to a calling party. However, in view of the foregoing observation that Mizikovsky does not teach the sending of a reply, it appears that there is no way of combining Bremer with Mizikovsky.

A similar comment applies to claims 4, 28, 32, 36 and 40 (middle of page 6 of the Office Action) wherein the examiner again relies on elements of the diagram in Fig. 4 of Bremer. In this respect, is noted that Bremer discloses apparatus in his Fig. 1, such as the answering circuit 128 (disclosed in column 2 at line 30), and also states that the controller 110 (column 4 at line 16) is responsive to a key input to select a message to be generated for the calling party. In this respect, the teaching of Bremer for the generation of specific messages appears to differ from that of Mizikovsky for use a signal to establish a routing of messages to various accessories. Accordingly, it does not appear that the teachings can be combined, or would motivate one to practice the present invention.

With respect to the fourth issue on whether claim 14 should be rejected under 35 U.S.C. 103, the examiner combines the teachings of Mizikovsky with Villa-Real. The examiner relies on Villa-Real to teach reminder messages. However, as noted above, since Mizikovsky does not send a reply, there is no motivation to combine the teaching of Villa-Real with the teaching of Mizikovsky.

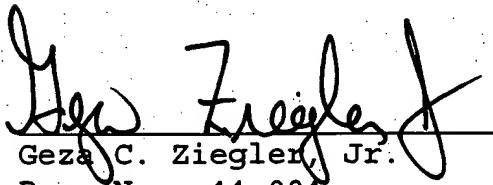
Also, with respect to the fifth issue on whether Claims 15-17 should be rejected under 35 U.S.C. 103 as being unpatentable over Mizikovsky in view of Wolff, is noted that the examiner (top of page 8 of the Office Action) states that it would be obvious to employ the time capability of Wolff and the apparatus of Mizikovsky for providing callers with selected time-based messages. Here too, it appears that one cannot inject the teaching of Wolff into the apparatus of Mizikovsky for modifying messages since (as noted above) Mizikovsky does not send replies to the calling parties.

In view of the foregoing argument, it is urged that Mizikovsky does not disclose essential features set forth in the present claims, and that the teachings of the references combined with Mizikovsky discuss other matters not fully compatible with the operation of the apparatus of Mizikovsky, thereby negating motivation for the combination of their teachings. This argument is believed to overcome the foregoing rejections so as to obtain allowable subject matter in the rejected claims.

Accordingly, it is requested that this Board find the rejected claims to contain allowable subject matter.

A check in the amount of \$330 is enclosed herewith for the appeal brief fee. The Commissioner is hereby authorized to charge payment for any additional fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



Geza C. Ziegler, Jr.
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13 July 2004

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IX. APPENDIX OF CLAIMS

The texts of the claims involved in the appeal are:

1. A method for replying to a call coming to a portable terminal wherein, in response to the incoming call, the portable terminal identifies the caller on the basis of an identification information and sends a reply, or directs the incoming call to another answering service, said reply having a form selectable from a plurality of forms of communication, and wherein said step of identifying the caller is accomplished by said portable terminal, and said step of sending a reply is accomplished by said portable terminal, said portable terminal being capable of performing said step of sending a reply by providing a selected response to said caller exclusively through the action of said portable terminal.

2. A method in accordance with claim 1, wherein the portable terminal sends said reply immediately in response to an incoming call, and said plurality of forms of communication include a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string.

3. A method in accordance with claim 1, wherein in response to an incoming call, the portable terminal alarms and waits during a certain predefined delay, and if a user during said

delay does not answer said call, the portable terminal sends said reply.

4. A method in accordance with claim 1, wherein in response to an incoming call, the portable terminal alarms, and if a user gives a certain key command, the portable terminal sends said reply.

5. A method in accordance with claim 3, wherein the portable terminal gives a soundless alarm.

6. A method in accordance with claim 2, wherein the portable terminal routes said call additionally to a usual call answering machine.

7. A method in accordance with claim 1, wherein said reply is at least partly formulated based on the identification of the calling party.

8. A method in accordance with claim 7 wherein a reply is sent to certain identified calling parties only.

9. A method in accordance with claim 7, wherein the reply to be sent in response to the incoming call is different according to the respective company said call is coming from.

12. A method in accordance with claim 7, wherein said identification of the calling party is based on a telephone notebook comprised by the communication.

13. A method in accordance with claim 12, wherein a piece of information applying to calling party, read from said telephone notebook, is included in said reply.

14. A method in accordance with claims 7, wherein a reminder to call the identified calling party will be stored into the portable terminal, in order to be presented to a user later.

15. A method in accordance claim 1, wherein said reply includes time information.

16. A method in accordance with claim 15, wherein said time information comprises a reference to a certain fixed time by a clock.

17. A method in accordance with claim 15, wherein said time information comprises the length of the time that is left from incoming of the call to a certain fixed time by a clock.

20. A portable terminal for replying to an incoming call, said portable terminal comprising means for identifying the caller on the basis of an identification information, and means for sending a reply in response to the call, said reply having a form selectable from a plurality of forms of communication, and wherein said means for sending a reply is capable of sending said reply by providing a selected response to said caller exclusively through the action of said portable terminal.

23. A method for replying to a call by a portable terminal, comprising the steps of:

in response to an incoming call, the portable terminal identifies a caller on the basis of caller identification

information, and sends a reply or directs the incoming call to another answering service, said portable terminal being capable of sending a reply in any one of a plurality of modes of response, said reply being in a one of said plurality of modes of response; and

wherein said step of identifying the caller is accomplished by said portable terminal, and said step of sending a reply is accomplished by said portable terminal.

24. A communication device for replying to an incoming call, wherein said communication device comprises means for identifying the caller on the basis of an identification information, and reply means for sending a reply in response to the call, said reply being in one of a plurality of modes of response; and

wherein said reply means is capable of sending said reply by providing a selected response to said caller, said reply means including a data entry device for generating a response and a selector of a previously stored response.

25. A method for replying to a call coming to a portable terminal, wherein in response to the incoming call, the portable terminal identifies the caller on the basis of an identification information and takes response action based on said identifying of the caller, and wherein said step of identifying the caller is accomplished by said portable terminal, and said step of taking response action is accomplished by said portable terminal, said portable terminal being capable of performing said step of taking response action by providing a selected response to said caller exclusively through the action of said portable terminal.

26. A method according to claim 25, wherein said step of taking response action comprises sending a reply to the caller, said reply being one of the following: a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string.

28. A method according to claim 25, wherein said step of taking response action comprises selecting a response action to be taken on the basis of a selection made by a user of the portable terminal when the incoming call occurs.

29. A method for replying to a call coming to a portable terminal, wherein in response to the incoming call, the portable terminal identifies the caller on the basis of an identification information and takes response action based on an alarm function selected for the portable terminal, and wherein said step of identifying the caller is accomplished by said portable terminal, and said step of taking response action is accomplished by said portable terminal, said portable terminal being capable of performing said step of taking response action by providing a selected response to said caller exclusively through the action of said portable terminal.

30. A method according to claim 25, wherein said step of taking response action comprises sending a reply to the caller, said reply being one of the following: a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string.

32. A method according to claim 25, wherein said step of taking response action comprises selecting a response action to be taken on the basis of a selection made by a user of the portable terminal when the incoming call occurs.

33. A portable terminal for replying to an incoming call, said portable terminal comprising means responsive to the incoming call for identifying the caller on the basis of an identification information, and means for responding to the incoming call with a response action based on identification of the caller, wherein the response action is a selected response to said caller exclusively through the action of said portable terminal.

34. A portable terminal according to claim 33, wherein said response action comprises sending a reply to the caller, said reply being one of the following: a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string.

36. A portable terminal according to claim 33, wherein said response action is taken on the basis of a selection made by a user of the portable terminal when the incoming call occurs.

37. A portable terminal for replying to an incoming call, said portable terminal comprising means responsive to the incoming call for identifying the caller on the basis of an

identification information, and means for responding to the incoming call with a response action based on an alarm function selected for the portable terminal, wherein the response action is a selected response to said caller exclusively through the action of said portable terminal.

38. A portable terminal according to claim 37, wherein said response action comprises sending a reply to the caller, said reply being one of the following: a voice message, an e-mail message, a facsimile, and an SMS (Short Message Service) message in the form of a character string.

40. A portable terminal according to claim 37, wherein said response action is taken on the basis of a selection made by a user of the portable terminal when the incoming call occurs.